

AMENDED IN SENATE JUNE 20, 2012

AMENDED IN ASSEMBLY APRIL 30, 2012

AMENDED IN ASSEMBLY MARCH 29, 2012

CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

ASSEMBLY BILL

No. 1715

Introduced by Assembly Member Smyth

February 16, 2012

An act to amend Section ~~25297.1~~ 25299.39.2 of the Health and Safety Code, relating to underground storage tanks.

LEGISLATIVE COUNSEL'S DIGEST

AB 1715, as amended, Smyth. Underground storage tanks: ~~local oversight programs;~~ tank case closure.

Existing law requires an owner, operator, or other responsible party to take corrective action in response to an unauthorized release of petroleum from an underground storage tank. Under existing law, the State Water Resources Control Board, a regional board, or a local agency may undertake or contract for corrective action in response to that unauthorized release. The State Water Resources Control Board is authorized to close, or to require the closure of, an underground storage tank case where an unauthorized release has occurred, if the board determines that the corrective action at the site complies with specified requirements. Existing law requires the manager of the Underground Storage Tank Cleanup Fund to annually review certain tank cases and authorizes the manager, with the approval of the tank owner or operator, to make a recommendation to the board for closure of a tank case. If the manager recommends closing a tank case, existing

law requires the board to limit reimbursement of subsequently incurred corrective action costs to \$10,000, except as specified.

This bill would require the manager, upon a determination that closure of the tank case is appropriate based upon that review, to provide a review summary report to the applicable regional board and local agency and provide opportunity for comment. The bill would prohibit the regional board or local agency from issuing a corrective action directive or enforcing an existing corrective action directive for a tank case for which the manager has provided this review summary report, until the board issues a decision regarding the closure of the tank case, except as specified. The bill would specify that the \$10,000 limit for corrective action costs after tank closure includes costs for groundwater monitoring.

The bill would make a statement of legislative intent regarding the board's actions regarding these tank cases.

Existing law generally regulates the storage of hazardous substances in underground storage tanks, including requiring underground storage tanks that are used to store hazardous substances to meet certain requirements. The State Water Resources Control Board is required to develop and implement a local oversight program for the abatement of, and oversight of the abatement of, unauthorized releases of hazardous substances from underground storage tanks by local agencies that apply for this authority. The local agency's cleanup, abatement, or other actions under that program are required to be consistent with procedures adopted by the board and be based upon cleanup standards specified by the board or a California regional water quality control board.

This bill would require the board to recommend to the Legislature, no later than January 1, 2014, appropriate standards and measurements for judging a local agency's compliance with those cleanup standards. The bill would make this requirement inoperative as of January 1, 2015.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. The Legislature finds and declares that the State
- 2 Water Resources Control Board should expediently process
- 3 underground storage tank cases subject to Section 25299.39.2 of
- 4 the Health and Safety Code while ensuring the adequate protection
- 5 of public health and safety, in accordance with Chapter 6.75

1 *(commencing with Section 25299.10) of Division 20 of the Health*
2 *and Safety Code.*

3 *SEC. 2. Section 25299.39.2 of the Health and Safety Code is*
4 *amended to read:*

5 25299.39.2. (a) (1) The manager responsible for the fund shall
6 notify tank owners or operators who have an active letter of
7 commitment that has been in an active status for five years or more
8 and shall review the case history of their tank case on an annual
9 basis unless otherwise notified by the tank owner or operator within
10 30 days of the notification. ~~The~~

11 *(A) If the manager determines that closure of the tank case is*
12 *appropriate based upon that review, the manager shall provide a*
13 *review summary report to the applicable regional board and local*
14 *agency summarizing the reasons for this determination and shall*
15 *provide the applicable regional board and local agency with an*
16 *opportunity for comment on the review summary report.*

17 *(B) If the manager determines that closure of the tank case is*
18 *appropriate, the manager, with approval of the tank owner or*
19 *operator, may make a recommendation to the board for closure.*
20 ~~The~~

21 *(C) The board may close any tank case or require the closure*
22 *of any tank case where an unauthorized release has occurred if the*
23 *board determines that corrective action at the site is in compliance*
24 *with all of the requirements of subdivisions (a) and (b) of Section*
25 *25296.10 and the corrective action regulations adopted pursuant*
26 *to Section 25299.3. Before*

27 *(D) Before closing or requiring closure of an underground*
28 *storage tank case, the board shall provide an opportunity for*
29 *reviewing and providing responses to the manager's*
30 *recommendation to the applicable regional board and local agency,*
31 *and to the water replenishment district, municipal water district,*
32 *county water district, or special act district with groundwater*
33 *management authority if the underground storage tank case is*
34 *located in the jurisdiction of that district.*

35 (2) Except as provided in paragraph (3), if the manager
36 recommends closing a tank case pursuant to paragraph (1), the
37 board shall limit reimbursement of subsequently incurred corrective
38 action costs, *including costs for groundwater monitoring,* to ten
39 thousand dollars (\$10,000) per year.

(3) The board may allow reimbursement of corrective action costs in excess of the ten thousand dollar (\$10,000) limit specified in paragraph (2) if the board determines that corrective action costs related to the closure will exceed this amount, or that additional corrective action is necessary to meet the requirements specified in subdivisions (a) and (b) of Section 25296.10.

(4) *After the manager provides a review summary report to the applicable regional board and local agency in accordance with subparagraph (A) of paragraph (1), the regional board or local agency shall not issue a corrective action directive or enforce an existing corrective action directive for the tank case until the board issues a decision on the closure of the tank case, unless one of the following applies:*

(A) *The regional board or local agency demonstrates to the satisfaction of the manager that there is an imminent threat to human health, safety, or the environment.*

(B) *The regional board or local agency demonstrates to the satisfaction of the manager that other site-specific needs warrant additional directives during the period that the board is considering case closure.*

(C) *After considering responses to the review summary report and other relevant information, the manager determines that case closure is not appropriate.*

(D) *The regional board or local agency closes the tank case but the directives are necessary to carry out case-closure activities.*

(b) An aggrieved person may, not later than 30 days from the date of final action by the board, pursuant to *subparagraph (C) of paragraph (1) of subdivision (a)*, file with the superior court a petition for writ of mandate for review of the decision. If the aggrieved person does not file a petition for writ of mandate within the time provided by this subdivision, a board decision shall not be subject to review by any court. Section 1094.5 of the Code of Civil Procedure shall govern proceedings for which petitions are filed pursuant to this subdivision. For purposes of subdivision (c) of Section 1094.5 of the Code of Civil Procedure, the court shall uphold the decision if the decision is based upon substantial evidence in light of the whole record.

(c) The authority provided under this section does not limit a person's ability to petition the board for review under any other state law.

1 ~~SECTION 1. Section 25297.1 of the Health and Safety Code~~
2 ~~is amended to read:~~

3 ~~25297.1. (a) In addition to the authority granted to the board~~
4 ~~pursuant to Division 7 (commencing with Section 13000) of the~~
5 ~~Water Code and to the department pursuant to Chapter 6.8~~
6 ~~(commencing with Section 25300), the board, in cooperation with~~
7 ~~the department, shall develop and implement a local oversight~~
8 ~~program for the abatement of, and oversight of the abatement of,~~
9 ~~unauthorized releases of hazardous substances from underground~~
10 ~~storage tanks by local agencies. In implementing the local oversight~~
11 ~~program, the agreement specified in subdivision (b) shall be~~
12 ~~between the board and the local agency. The board shall select~~
13 ~~local agencies for participation in the program from among those~~
14 ~~local agencies that apply to the board, giving first priority to those~~
15 ~~local agencies that have demonstrated prior experience in cleanup,~~
16 ~~abatement, or other actions necessary to remedy the effects of~~
17 ~~unauthorized releases of hazardous substances from underground~~
18 ~~storage tanks. The board shall select only those local agencies that~~
19 ~~have implemented this chapter and that, except as provided in~~
20 ~~Section 25404.5, have begun to collect and transmit to the board~~
21 ~~the surcharge or fees pursuant to subdivision (b) of Section 25287.~~

22 ~~(b) (1) In implementing the local oversight program described~~
23 ~~in subdivision (a), the board may enter into an agreement with any~~
24 ~~local agency to perform, or cause to be performed, any cleanup,~~
25 ~~abatement, or other action necessary to remedy the effects of a~~
26 ~~release of hazardous substances from an underground storage tank~~
27 ~~with respect to which the local agency has enforcement authority~~
28 ~~pursuant to this section. The board may not enter into an agreement~~
29 ~~with a local agency for soil contamination cleanup or for~~
30 ~~groundwater contamination cleanup unless the board determines~~
31 ~~that the local agency has a demonstrated capability to oversee or~~
32 ~~perform the cleanup.~~

33 ~~(2) The implementation of the cleanup, abatement, or other~~
34 ~~action shall be consistent with procedures adopted by the board~~
35 ~~pursuant to subdivision (d) and shall be based upon cleanup~~
36 ~~standards specified by the board or regional board.~~

37 ~~(3) The board shall, no later than January 1, 2014, recommend~~
38 ~~to the Legislature appropriate standards and measurements for~~
39 ~~judging a local agency's compliance with the cleanup standards~~
40 ~~specified pursuant to paragraph (2). The requirement for submitting~~

1 a report under this paragraph is inoperative on January 1, 2015,
2 pursuant to Section 10231.5 of the Government Code, and shall
3 be submitted in compliance with Section 9795 of the Government
4 Code.

5 (e) The board shall provide funding to a local agency that enters
6 into an agreement pursuant to subdivision (b) for the reasonable
7 costs incurred by the local agency in overseeing any cleanup,
8 abatement, or other action taken by a responsible party to remedy
9 the effects of unauthorized releases from underground storage
10 tanks.

11 (d) The board shall adopt administrative and technical
12 procedures, as part of the state policy for water quality control
13 adopted pursuant to Section 13140 of the Water Code, for cleanup
14 and abatement actions taken pursuant to this section. The
15 procedures shall include, but not be limited to, all of the following:

16 (1) Guidelines as to which sites may be assigned to the local
17 agency.

18 (2) The content of the agreements which may be entered into
19 by the board and the local agency.

20 (3) Procedures by which a responsible party may petition the
21 board or a regional board for review, pursuant to Article 2
22 (commencing with Section 13320) of Chapter 5 of Division 7 of
23 the Water Code, or pursuant to Chapter 9.2 (commencing with
24 Section 2250) of Division 3 of Title 23 of the California Code of
25 Regulations, or any successor regulation, as applicable, of actions
26 or decisions of the local agency in implementing the cleanup,
27 abatement, or other action.

28 (4) Protocols for assessing and recovering money from
29 responsible parties for any reasonable and necessary costs incurred
30 by the local agency in implementing this section, as specified in
31 subdivision (i), unless the cleanup or abatement action is subject
32 to subdivision (d) of Section 25296.10.

33 (5) Quantifiable measures to evaluate the outcome of a pilot
34 program established pursuant to this section.

35 (e) Any agreement between the regional board and a local
36 agency to carry out a local oversight program pursuant to this
37 section shall require both of the following:

38 (1) The local agency shall establish and maintain accurate
39 accounting records of all costs it incurs pursuant to this section
40 and shall periodically make these records available to the board.

1 ~~The Controller may annually audit these records to verify the~~
2 ~~hourly oversight costs charged by a local agency. The board shall~~
3 ~~reimburse the Controller for the cost of the audits of a local~~
4 ~~agency's records conducted pursuant to this section.~~

5 ~~(2) The board and the department shall make reasonable efforts~~
6 ~~to recover costs incurred pursuant to this section from responsible~~
7 ~~parties, and may pursue any available legal remedy for this purpose.~~

8 ~~(f) The board shall develop a system for maintaining a database~~
9 ~~for tracking expenditures of funds pursuant to this section, and~~
10 ~~shall make this data available to the Legislature upon request.~~

11 ~~(g) (1) Sections 25355.5 and 25356 do not apply to expenditures~~
12 ~~from the Toxic Substances Control Account for oversight of~~
13 ~~abatement of releases from underground storage tanks as part of~~
14 ~~the local oversight program established pursuant to this section.~~

15 ~~(2) A local agency that enters into an agreement pursuant to~~
16 ~~subdivision (b) shall notify the responsible party, for any site~~
17 ~~subject to a cleanup, abatement, or other action taken pursuant to~~
18 ~~the local oversight program established pursuant to this section,~~
19 ~~that the responsible party is liable for not more than 150 percent~~
20 ~~of the total amount of site-specific oversight costs actually incurred~~
21 ~~by the local agency.~~

22 ~~(h) Any aggrieved person may petition the board or regional~~
23 ~~board for review of the action or failure to act of a local agency~~
24 ~~that enters into an agreement pursuant to subdivision (b), at a site~~
25 ~~subject to cleanup, abatement, or other action conducted as part~~
26 ~~of the local oversight program established pursuant to this section,~~
27 ~~in accordance with the procedures adopted by the board or regional~~
28 ~~board pursuant to subdivision (d).~~

29 ~~(i) (1) For purposes of this section, site-specific oversight costs~~
30 ~~include only the costs of the following activities, when carried out~~
31 ~~by the staff of a local agency or the local agency's authorized~~
32 ~~representative, that are either technical program staff or their~~
33 ~~immediate supervisors:~~

34 ~~(A) Responsible party identification and notification.~~

35 ~~(B) Site visits.~~

36 ~~(C) Sampling activities.~~

37 ~~(D) Meetings with responsible parties or responsible party~~
38 ~~consultants.~~

39 ~~(E) Meetings with the regional board or with other affected~~
40 ~~agencies regarding a specific site.~~

1 ~~(F) Review of reports, workplans, preliminary assessments,~~
2 ~~remedial action plans, or postremedial monitoring.~~

3 ~~(G) Development of enforcement actions against a responsible~~
4 ~~party.~~

5 ~~(H) Issuance of a closure document.~~

6 ~~(2) The responsible party is liable for the site-specific oversight~~
7 ~~costs, calculated pursuant to paragraphs (3) and (4), incurred by a~~
8 ~~local agency, in overseeing any cleanup, abatement, or other action~~
9 ~~taken pursuant to this section to remedy an unauthorized release~~
10 ~~from an underground storage tank.~~

11 ~~(3) Notwithstanding the requirements of any other provision of~~
12 ~~law, the amount of liability of a responsible party for the oversight~~
13 ~~costs incurred by the local agency and by the board and regional~~
14 ~~boards in overseeing any action pursuant to this section shall be~~
15 ~~calculated as an amount not more than 150 percent of the total~~
16 ~~amount of the site-specific oversight costs actually incurred by the~~
17 ~~local agency and shall not include the direct or indirect costs~~
18 ~~incurred by the board or regional boards.~~

19 ~~(4) (A) The total amount of oversight costs for which a local~~
20 ~~agency may be reimbursed shall not exceed one hundred fifteen~~
21 ~~dollars (\$115) per hour, multiplied by the total number of~~
22 ~~site-specific hours performed by the local agency.~~

23 ~~(B) The total amount of the costs per site for administration and~~
24 ~~technical assistance to local agencies by the board and the regional~~
25 ~~board entering into agreements pursuant to subdivision (b) shall~~
26 ~~not exceed a combined total of thirty-five dollars (\$35) for each~~
27 ~~hour of site-specific oversight. The board shall base its costs on~~
28 ~~the total hours of site-specific oversight work performed by all~~
29 ~~participating local agencies. The regional board shall base its costs~~
30 ~~on the total number of hours of site-specific oversight costs~~
31 ~~attributable to the local agency that received regional board~~
32 ~~assistance.~~

33 ~~(C) The amounts specified in subparagraphs (A) and (B) are~~
34 ~~base rates for the 1990–91 fiscal year. Commencing July 1, 1991,~~
35 ~~and for each fiscal year thereafter, the board shall adjust the base~~
36 ~~rates annually to reflect increases or decreases in the cost of living~~
37 ~~during the prior fiscal year, as measured by the implicit price~~
38 ~~deflator for state and local government purchases of goods and~~
39 ~~services, as published by the United States Department of~~
40 ~~Commerce or by a successor agency of the federal government.~~

1 ~~(5) In recovering costs from responsible parties for costs~~
2 ~~incurred under this section, the local agency shall prorate any costs~~
3 ~~identifiable as startup costs over the expected number of cases that~~
4 ~~the local agency will oversee during a 10-year period. A responsible~~
5 ~~party who has been assessed startup costs for the cleanup of any~~
6 ~~unauthorized release that, as of January 1, 1991, is the subject of~~
7 ~~oversight by a local agency, shall receive an adjustment by the~~
8 ~~local agency in the form of a credit, for the purposes of cost~~
9 ~~recovery. Startup costs include all of the following expenses:~~

10 ~~(A) Small tools, safety clothing, cameras, sampling equipment,~~
11 ~~and other similar articles necessary to investigate or document~~
12 ~~pollution.~~

13 ~~(B) Office furniture.~~

14 ~~(C) Staff assistance needed to develop computer tracking of~~
15 ~~financial and site-specific records.~~

16 ~~(D) Training and setup costs for the first six months of the local~~
17 ~~agency program.~~

18 ~~(6) This subdivision does not apply to costs that are required to~~
19 ~~be recovered pursuant to Article 7.5 (commencing with Section~~
20 ~~25385) of Chapter 6.8.~~

21 ~~(j) The inoperation of former paragraph (1) of this subdivision,~~
22 ~~as it read on January 1, 2012, does not affect the validity of any~~
23 ~~action taken by the Santa Clara Valley Water District before June~~
24 ~~30, 2005, and does not provide a defense for an owner, operator,~~
25 ~~or other responsible party who fails to comply with that action.~~